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**DEC 17 2008**

**OFFICE OF PETITIONS**

In re Patent No. 7,314,619 :  
Adams et al. : DECISION ON REQUEST  
Issue Date: January 1, 2008 : FOR RECONSIDERATION OF  
Application No. 10/052,798 : PATENT TERM ADJUSTMENT  
Filed: November 2, 2001 :  
Attorney Docket No. P1101R2D1 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(d)" filed January 16, 2008. Patentees request that the Patent Term Adjustment for the above-identified patent be set at 821 days.

The request for reconsideration of the patent term adjustment indicated in the patent is DISMISSED.

Patentees are given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

On January 1, 2008, the above-identified application matured into U.S. Patent No. 7,314,619. The instant request for reconsideration was timely filed on January 16, 2008. The patent issued with a revised Patent Term Adjustment of 741 days.

Patentees request that the revised Patent Term Adjustment be corrected from 741 days to 821 days. Patentees assert that an additional period of adjustment of 81 days should be entered pursuant to 37 CFR 1.702(a)(1) for the Office's failure to mail at least one notification under 35 U.S.C. 132 no later than 14

months after the date on which the application was filed under 35 U.S.C. 111(a). Specifically, patentees aver:

The 'Three Years' delay under § 1.703(b) and § 1.702(b) running from November 2, 2004 to January 1, 2008 (i.e., **1154 days**) and the examination delay under §1.703(a)(1) running from January 2, 2004 and March 24, 2004 (i.e. **81 days**) do not overlap. Accordingly, the total number of days this patent was delayed by PTO inaction is **1235 days**, not the **1155 days** stated by the PTO.

\* \* \*

The difference between the 'Three Years' delay plus the examination delay that does not overlap with the 'Three Years' delay (i.e., **1235 days**) minus the period attributable to Applicant delay (i.e., **414 days**) is **821 days** (§ 1.703(f)).

*Petition dated 01/06/08, pp. 2-3.*

Patentees state that the instant patent is not subject to a terminal disclaimer.

Initially, the Office notes: "The period of adjustment under § 1.702(b) is the number of days, if any, beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) . . . and ending on the date a patent was issued[.]" 37 CFR 1.703(b). "When a period is indicated (in 37 CFR 1.703 or 1.704) as 'beginning' on a particular day, that day is included in the period, in that such day is 'day one' of the period and not 'day zero.'" MPEP 2731. "For example, a period beginning on April 1 and ending on April 10 is ten (and not nine) days in length." Id.

In this instance, the period of adjustment under 37 CFR 1.703(b) was properly calculated as 1155 days, the number of days beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a), November 3, 2004, and ending on the date a patent was issued, January 1, 2008. Thus, the instant patent issued three years and 1155 days after its filing date. However, any days of delay for Office issuance of the patent

more than three years after the filing date of the application, which overlap, with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. Further, in considering the overlap, the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). See 35 U.S.C. 154(b)(1)(B); 35 U.S.C. 154(b)(2)(A); and 37 CFR 1.703(f).

In this instance, the period of adjustment of 1155 days attributable to the delay in the issuance of the patent overlaps with the period of adjustment of 81 days attributable to grounds specified in 37 CFR 1.702(a)(1). Thus, no additional period of adjustment beyond 1155 days was entered. Accordingly, the period of 1155 days for Office delay is correct.

In view thereof, the patent term adjustment of **741 days** (1155 days of Office delay - 414 days of applicant delay) indicated in the patent is correct.

The Office acknowledges receipt of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fee is required.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3411.



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